

ESTTA Tracking number: **ESTTA229588**

Filing date: **08/11/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Exxon Mobil Corporation
Granted to Date of previous extension	08/10/2008
Address	5959 Las Colinas Blvd Irving, TX 75039-2298 UNITED STATES

Attorney information	Stephen P. Meleen Pirkey Barber LLP 600 Congress Ave., Suite2120 Austin, TX 78701 UNITED STATES smeleen@pirkeybarber.com, eolson@pirkeybarber.com, tmcentral@pirkeybarber.com Phone:512.322.5200
----------------------	--

Applicant Information

Application No	78840455	Publication date	02/12/2008
Opposition Filing Date	08/11/2008	Opposition Period Ends	08/10/2008
Applicant	Jaya Medical Supplies, Inc. 216 Charles St. Hackensack, NJ 07601 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 1995/07/01 First Use In Commerce: 1995/07/01
All goods and services in the class are opposed, namely: Latex and synthetic gloves for protective use in high tech and biotech research and clean rooms

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	968512	Application Date	11/16/1971
Registration Date	09/18/1973	Foreign Priority Date	NONE
Word Mark	EXXON		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U015 (International Class 004). First use: First Use: 1971/10/04 First Use In Commerce: 1971/10/04 PETROLEUM AND PETROLEUM PRODUCTS-NAMELY, INDUSTRIAL OILS AND GREASES, PETROLEUM AND [MINERAL WAXES], LUBRICANTS, HYDROCARBON FUELS, PETROLEUM ILLUMINANTS AND [CRUDE OIL]

U.S. Registration No.	1412809	Application Date	02/10/1986
Registration Date	10/14/1986	Foreign Priority Date	NONE
Word Mark	XX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1985/07/26 First Use In Commerce: 1985/07/26 NEO DECANOIC ACID USED AS A CHEMICAL INTERMEDIATE IN THE FOLLOWING PRODUCTS: CORROSION INHIBITORS, FOAM BOOSTERS AND SUPPRESSANTS, FRAGRANCES, ODORANTS, COSMETICS, METAL WORKING FLUIDS, SYNTHETIC SOLUBLE OILS, METALS EXTRACTION AGENTS, PESTICIDES (BIOCIDES, DEFOLIANTS, HERBICIDES, INSECTICIDES, FUNGICIDES, REPELLANTS), PHARMACEUTICALS, PLASTICIZERS, VINYL STABILIZERS, SURFACE ACTIVE AGENTS, SYNTHETIC LUBRICANTS, AND THE LIKE		

U.S. Registration No.	2582557	Application Date	03/02/1998
Registration Date	06/18/2002	Foreign Priority Date	NONE
Word Mark	XX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1998/09/02 First Use In Commerce: 1998/09/02 Polymers, namely hydrocarbon-based plastic resins and tackifying resins for general industrial use		

U.S. Registration No.	2902588	Application Date	03/02/1998
Registration Date	11/16/2004	Foreign Priority Date	NONE
Word Mark	XX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1997/03/31 First Use In Commerce: 1997/03/31 Polybutylene for use in the manufacture of adhesives, binders, coatings, sealants, roof sheeting, magnetic backings, pharmaceutical packaging, pipe wrap, wax blends, additives, electrical and cable insulation, mechanical goods, and polyolefin blends		

	Class 017. First use: First Use: 1994/12/31 First Use In Commerce: 1994/12/31 Synthetic rubber for use in the manufacture of tires, tubes, vehicle body sealing; belts, hoses, seals, glass run channels, mechanical goods, electrical cable jacketing, roof sheeting, garden hoses, materials for sound deadening, adhesives, bumpers, dashboard parts, computer housing, electronic components, ski boots, wax blends, chewing gum base and in engineering thermoplastics
--	--

U.S. Registration No.	2791743	Application Date	11/29/1999
Registration Date	12/09/2003	Foreign Priority Date	NONE
Word Mark	EXXONMOBIL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 001. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 olefins, aromatic hydrocarbons, and solvents for use with paints, lacquers and similar products, for manufacture of inks and toners, for use in non-impact printing applications and for use in the industrial arts; solvents used as a component in adhesives, pharmaceuticals, fragrances, metal working fluids, pesticides, sealants, lubricants; polymers for use in the manufacture of adhesives and in the plastic industry; hydrocarbon polymers, namely resins, plastomers and elastomers in solid, semi-solid, liquid and powdered form for general use in the industrial arts in lieu of or in combination with natural or synthetic rubber and rubber-like materials</p> <p>Class 004. First use: First Use: 2002/00/00 First Use In Commerce: 2002/00/00 aviation fuels, lubricating oils for marine, applications</p> <p>Class 016. First use: First Use: 1999/12/00 First Use In Commerce: 1999/12/00 periodical publications, namely, reports, booklets, brochures, pamphlets and newsletters and all kinds of printed matters concerning items of interest about products, services, events and personnel of applicant and about the chemical and petroleum industry; company stationery, business cards and posters</p> <p>Class 017. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 polyolefin films made from polyethylene and polypropylene polymer or derivatives for use in the packaging industry; polyolefin in bars, blocks pellets, rods, sheets and tubes for use in the manufacture of packages and labels; synthetic rubber and rubber substitutes for use in the industrial arts, for use in the manufacture of tires, tubes, vehicle body sealing; belts, hoses, seals, glass run channels, mechanical goods, electrical cable jacketing, roof sheeting, garden hoses, materials for sound deadening, adhesives, bumpers, dashboard parts, computer housing, electronic components, ski boots, was blends, chewing gum base and in engineering themoplastics</p>		

Attachments	72407854#TMSN.gif (1 page)(bytes) 73582326#TMSN.gif (1 page)(bytes) 75442939#TMSN.gif (1 page)(bytes) 75442938#TMSN.gif (1 page)(bytes) 75983349#TMSN.gif (1 page)(bytes) noo 195.pdf (7 pages)(534890 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.




Signature	/SPM/
Name	Stephen P. Meleen
Date	08/11/2008



“ExxonMobil” in a design form that incorporates the Interlocking X Design. These marks are hereinafter collectively referred to as Opposer’s “Interlocking X Marks.”

2. Opposer has used its Interlocking X Marks in connection with the sale and promotion of gasoline, motor oil, other petroleum products, chemical products, and various services. Opposer’s chemical products sold under its Interlocking X Marks include chemicals used in the preparation of pharmaceuticals and various other products.

3. Opposer’s Interlocking X Marks constitute a family of marks. Many of Opposer’s Interlocking X Marks are used and promoted together, and are used on or in connection with related or complementary goods and services. When used with such goods and services, relevant consumers recognize and rely upon Opposer’s Interlocking X Marks as an indicator of origin.

4. Opposer is the owner of numerous valid and subsisting United States Trademark Registrations for its Interlocking X Marks, including the following:

Mark:	Reg. No.:	Reg. Date:	Goods/Services:
EXXON & Design 	968,512	9/18/1973	Petroleum and petroleum products —namely: industrial oils and greases, petroleum and mineral waxes, lubricants, hydrocarbon fuels, petroleum illuminants and crude oil
XX (stylized) 	1,412,809	10/14/1986	Neo decanoic acid used as a chemical intermediate in the following products: corrosion inhibitors, foam boosters and suppressants, fragrances, odorants, cosmetics, metal working fluids, synthetic soluble oils, metals extraction agents, pesticides, pharmaceuticals, plasticizers, vinyl stabilizers, surface active agents, synthetic lubricants, and the like
XX (stylized) 	2,582,557	6/18/2002	Polymers, namely hydrocarbon-based plastic resins and tackifying resins for general industrial use

Mark:	Reg. No.:	Reg. Date:	Goods/Services:
XX (stylized) 	2,902,588	11/16/2004	<p>Synthetic rubber for use in the manufacture of tires, tubes, vehicle body sealing; belts, hoses, seals, glass run channels, mechanical goods, electrical cable jacketing, roof sheeting, garden hoses, materials for sound deadening, adhesives, bumpers, dashboard parts, computer housing, electronic components, ski boots, wax blends, chewing gum base and in engineering thermoplastics</p> <p>Polybutylene for use in the manufacture of adhesives, binders, coatings, sealants, roof sheeting, magnetic backings, pharmaceutical packaging, pipe wrap, wax blends, additives, electrical and cable insulation, mechanical goods, and polyolefin blends.</p>
ExxonMobil (stylized) 	2,791,743	12/3/03	<p>Polyolefin films made from polyethylene and polypropylene polymer or derivatives for use in the packaging industry; polyolefin in bars, blocks pellets, rods, sheets and tubes for use in the manufacture of packages and labels; synthetic rubber and rubber substitutes for use in the industrial arts, for use in the manufacture of tires, tubes, vehicle body sealing; belts, hoses, seals, glass run channels, mechanical goods, electrical cable jacketing, roof sheeting, garden hoses, materials for sound deadening, adhesives, bumpers, dashboard parts, computer housing, electronic components, ski boots, was blends, chewing gum base and in engineering thermoplastics.</p> <p>Periodical publications, namely, reports, booklets, brochures, pamphlets and newsletters and all kinds of printed matters concerning items of interest about products, services, events and personnel of applicant and about the chemical and petroleum industry; company stationery, business cards and posters.</p> <p>Aviation fuels, lubricating oils for marine applications.</p> <p>Olefins, aromatic hydrocarbons, and solvents for use with paints, lacquers and similar products, for manufacture of inks and toners, for use in non-impact printing applications and for use in the industrial arts; solvents used as a component in adhesives, pharmaceuticals, fragrances, metal working fluids, pesticides, sealants, lubricants; polymers for use in the manufacture of adhesives and in the plastic industry; hydrocarbon polymers, namely resins, plastomers and elastomers in solid, semi-solid, liquid and powdered form for general use in the industrial arts in lieu of or in combination with natural or synthetic rubber and rubber-like materials.</p>

5. Opposer has invested many millions of dollars for more than three decades in advertising and promoting its Interlocking X Marks and the goods and services sold under those marks, with the result that the purchasing public has come to know, rely upon, and recognize the goods and services of Opposer by those marks. Opposer has established valuable goodwill in its Interlocking X Marks. Opposer's Interlocking X Marks have become well known to members of the relevant consumer groups.

6. Through Opposer's extensive use and promotion of its Interlocking X Marks, these marks have become famous and consumers have come to recognize the marks as such, and to associate the marks uniquely with Opposer and its goods and services.

7. Application Serial No. 78840455 (the "Application") was filed on March 17, 2006, for the mark MEDTEXX covering "latex and synthetic gloves for protective use in high tech and biotech research and clean rooms." The specimen filed with the Application shows the mark MEDTEXX presented in a design form containing an Interlocking X design.

8. Opposer has priority based on its use and registration of its Interlocking X Marks in the United States. Opposer used and registered its Interlocking X Marks, and those marks became famous, long prior to Applicant's claimed date of first use anywhere and in commerce of July 1, 1995.

9. Applicant's mark MEDTEXX is visually similar to Opposer's Interlocking X Marks. Applicant's mark includes the letters "EXX," and the "XX" portion of the mark as shown in the specimen is interlocked in a manner virtually identical to Opposer's famous Interlocking X design mark (shown in, *inter alia*, Reg. No. 1,412,809 and incorporated into the famous EXXON and EXXONMOBIL logos).

10. Applicant's goods offered under the mark MEDTEXX are related to the goods and services Opposer offers under its Interlocking X Marks. For instance, Opposer uses its Interlocking X Marks in connection with materials that are used to make plastic gloves.

11. Opposer's Interlocking X Marks are of sufficient fame and reputation among consumers such that when Applicant's mark MEDTEXX is used for the products identified in the application, a connection with Opposer would be presumed by consumers.

12. Because Applicant's mark MEDTEXX so resembles Opposer's Interlocking X Marks, individually and collectively, as to be likely, when used in connection with the claimed goods of Applicant, to cause confusion, or to cause mistake, or to deceive, registration should be refused under 15 U.S.C. § 1052(d).

13. Applicant's mark MEDTEXX would be likely to cause dilution by blurring or dilution by tarnishment of Opposer's famous Interlocking X Marks, individually and collectively, and registration should be refused under 15 U.S.C. § 1125(c).

14. Opposer has not given Applicant permission or approval to use or register the mark MEDTEXX.

15. Registration of Applicant's mark MEDTEXX on the Principal Register would be inconsistent with Opposer's rights under the aforementioned registrations, and its common-law rights, and would be damaging to Opposer.

WHEREFORE, Opposer prays that Application Serial No. 78840455 be rejected, and that registration of the mark therein be refused.

This Notice of Opposition is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to draw on the Deposit Account of Pirkey Barber LLP, Account No. 50-3924/EXCO:195/SPM, if there is any problem with the processing of the electronically submitted fee.

Date: August 11, 2008

Respectfully submitted,



Louis T. Pirkey
William G. Barber
Stephen P. Meleen
PIRKEY BARBER LLP
600 Congress Avenue, Suite 2120
Austin, Texas 78701
(512) 322-5200

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF OPPOSITION was served by first class mail on August 11, 2008 upon Applicant's attorney:

John Alumit
Patel and Alumit, P.C.
Suite 360
16830 Ventura Blvd.
Encino CA 91436